Supreme Court, U.S.
FILED

97.281 MAY 27 1997

No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

IN RE THE APPLICATION FOR CERTIFICATION FOR

C.R.W., PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO

THE GEORGIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Georgia Supreme Court's decision denying Applicant certification to practice law on the grounds of fiscal irresponsibility when that reason did not appear in the specifications presented to Applicant as required by the Rules denied Applicant's Fourteenth Amendment right to procedural due process.

2. Whether The Board's decision denying Applicant admission to the Georgia State Bar on the basis of "fiscal irresponsibility" due to Applicant's discharge in bankruptcy of student loans incurred for a legitimate reason when she was unable to properly discharge her financial duties is violative of Applicant's federally protected liberty interest and to Applicant's right of due process.

3. Whether The Board's decision denying Applicant admission to the Georgia State Bar on the basis of "fiscal irresponsibility" due to Applicant's discharge in bankruptcy of student loans incurred for a legitimate reason when she was unable to properly discharge her financial duties is violative of Applicant's federally protected right to bankruptcy.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Attorney General
State of Georgia

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

No. _____

IN RE THE APPLICATION FOR CERTIFICATION
FOR C.R.W., PETITIONER.

Petition for a Writ of Certiorari to the United States Supreme Court from the Georgia Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Georgia Supreme Court appears at Appendix A to the petition and has been designated for publication but is not yet reported.

JURISDICTION

The date on which the highest state court decided my case was February 24, 1997. A copy of that decision appears at Appendix A. No petition for rehearing or motion for extension of time in which to file this petition has been filed.

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. The Supremacy Clause of Article VI of the United States Constitution.

II. Fifth Amendment to the United States Constitution.

III. Fourteenth Amendment to the United States Constitution.

IV. Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Part A, Section 8(a).

STATEMENT OF THE CASE

Applicant, a graduate of the George Washington University National Law Center and a member of the District of Columbia and United States Tax Court bars, filed an application with the Georgia State Bar Board to Determine Fitness of Bar Applicants ("Board") for a certificate of fitness to practice law. After a hearing attended by Applicant, the Board tentatively denied her certification to practice law in Georgia and notified her of her right to a formal hearing "with respect to the reasons for the Board's tentative denial" *See;* Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Part A, Section 8(a) ("Rules").

Incorporated in its tentative denial were five "specifications of the reasons for the Board's tentative order

..." Id. [1] Applicant invoked her right, pursuant to the Rules, for a formal hearing. A member of the State Bar of Georgia was appointed by the Georgia Supreme Court to preside over said hearing. Both the Applicant and counsel for the Board

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[1] The specifications were as follows:

"1. Upon graduation for George Washington University Law School in 1992, you became responsible for some $100,000 in student loans.

2. You were not candid about these loans on your application submitted January 5, 1994, or upon request for further information concerning the numberous loans when asked by the Office of Bar Admissions.

3. Although four of your eight student loans were discharged eventually through bankruptcy court, for loans remain to be paid. ... Because of your lack of candor, it is unknown and unverified as to the exact payment which is due and how much as been paid over the last six months in these above-referenced loans.

4. At the meeting of the Board ..., you were not candid with the Board when asked if you knew Ms. Ruth Hoch at George Washinton University, with whom you made arrangements to repay your laons from George Washington University.

5. During bankruptcy proceedings, instead of notifying Ms. Hoch at George Washington University about the adversary proceeding regarding discharge of the ... loan, you sent the notice only to the Legal Department. This resulted in GWU's untimely attempt to avoid default of this loan."

appeared at the formal hearing that addressed each of the five specifications of the Board. The hearing officer found each of the five specifications to be either irrelevant or untrue, and recommended that each of them be overruled and set aside.[2]

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2 The hearing officer's findings are as follows:

1. "This specification is simply a statement of background information... Obviously, an applicant's responsibility for loan debts incurred for otherwise legitimate purposes is a circumstance which, by itself, has absolutely no relevance to an applicant's integrity and character..."

2. "There is not evidence that the listing provided by Applicant in her original application and amendments was materially incorrect...There is no evidence that the Applicant had any more complete information than was provided...There is not the slightest suggestion of any additional adverse information which Applicant was attempting to conceal...The assertion in Specification No.2 is not true."

3. To the extent No.3 asserts that applicant obtained a discharge in bankruptcy for four of her student loans, the hearing officer determined that the specificatin is "simply bankground information. To the extent No.3 asserts a lack of candor, the hearing officer found that "[t]he information sought was known to the Office of Bar Admissions because Applicant disclosed that information."

4. Specification No.4 was not true after finding that applicant was truthful in her response to the Board that she

The Board rejected the hearing officer's recommendation for certification and notified Applicant that she was being denied certification to practice law on the grounds of "lack of fiscal responsibility". The Georgia Supreme Court affirmed the Board's decision on February 24, 1997. Applicant hereby appeals the decision of the Georgia Supreme Court.

REASONS FOR GRANTING THE PETITION

(a) The Georgia Supreme Court's decision denying Applicant certification to practice law on the grounds of fiscal irresponsibility when that reason did not appear in the specifications presented to Applicant as required by the Rules denied Applicant's Fourteenth Amendment right to procedural due process as set forth by this Court in

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had had contact with someone at GWU but could not remember who it was.

5. "To the extent that Specification No.5 alleges that Applicant engaged in any action which reflects upon her integrity and character requiste to be a member of the Bar, the allegations are not true."

numerous, relevant decisions. The Rules set forth the right to notice and a fair hearing on the merits before the denial of certification. The Rules were not followed and Applicant had no notice of the grounds relied on for denial of certification. The Board's denial of certification on grounds not stated in the specifications denied Applicant the Constitutional right to notice and an opportunity to be heard and respond to said grounds. The Fourteenth Amendment requires that before an important property interest such as the right to access to employment may be denied, the Applicant must be provided notice and a fair and impartial hearing. This was not done in this case.

(b) The Board held in direct conflict with the Supreme Courts of Florida and Minnesota, that an Applicant that discharges in bankruptcy student loans incurred for a legitimate reason and when she is unable to properly discharge her financial duties is "fiscally irresponsible" and, thus, lacking in good moral character. *See;* Florida Board of Bar Examiners, 645 So.2d 972 (Fla.1994) and Application of Gahan, 279 N.W.2d 826 (Minn.1979), respectively.

The Board is denying Applicant an important liberty interest without any evidence to do so. In Schware v. Board of Bar Examiners, 353 U.S. 232, 239 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957), this Court held that it is violative of due process for the government to deny admission to the practice of law when the government's decision is not supported by the evidence. The Board's decision is not supported by the evidence in this case. The Board is denying admission to Applicant because she incurred debt in order to obtain an education and was unable to live upon to the payment plan originally agreed upon. The Board's decision that obtaining debt for a legitimate purpose, using legitimate means to relieve oneself of the burden of said debt, and keeping current on repayment plans worked out with creditors whose claims survived the bankruptcy proceeding, constitutes fiscal irresponsibility is violative of this Court's decisions requiring due process.

(c) The Board is denying Applicant's federally protected right to discharge student loans via the bankruptcy process. In its April 13, 1995 letter, the Board requests the

Applicant to "file a copy of the order in which the loans were discharged and a statement to the Board concerning your eventual intentions toward the discharged loans[emphasis added]". The Board asked during a phone conversation whether Applicant was going to reaffirm her discharged student loans. And, the Board refused to allow Applicant a formal hearing while her bankruptcy was pending. The Bankruptcy Code states that the State cannot use its power to examine bar applicants as a means of coercing them into reaffirming debts previously discharged. In the Matter of Anonymous, 550 N.Y.S.2d 270 (Ct.App. 1989), *citing*, 11 U.S.C.A. Section 525. This directly conflicts the Supremacy Clause of the United States Constitution. *See;* Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971).

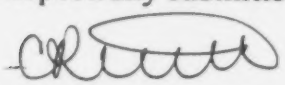
The decision of the Board conflicts with the decision of the Oregon Supreme Court in In the Matter of the Application of Ronald Curtis Taylor, For Admission to Practice Law in the State of Oregon, 647 P.2d 462 (Ore.1982). Although Constitutional limitations do not

prevent the Board from inquiring into Applicant's responsibility or moral character in financial matters, "[t]he inquiry is impermissible only when the fact of bankruptcy is labeled 'immoral' or 'irresponsible', and admission is denied for that reason". Application of Gahan, 279 N.W.2d 826, 839. Here, the Board has labeled Applicant "fiscally irresponsible" for filing and discharging student loans via bankruptcy. Applicant lacked fraud, deceit, or other conduct which could be considered to involve moral turpitude in her bankruptcy. The circumstances of Applicant's bankruptcy demonstrate that she was subject to extreme hardship if required to repay all of her student loans. Thus, the order of the Georgia Supreme Court should be set aside.

CONCLUSION

Based on the foregoing reasons, Applicant prays that this Court will grant her Petition for a Writ of Certiorari.

Respectfully submitted,



Cynthia Rena Webb, *pro se*
Date: 7/28 , 1997

APPENDICES

APPENDIX A

In the Supreme Court of Georgia

Decided FEB 24, 1997

S97A0802. In re Application for Certification for C.R.W. (Bar Admission Docket No. 157.)

PER CURIAM.

C.R.W. is appealing the decision of the Board to Determine Fitness of Bar Applicants to deny her application for certification of fitness to practice law in Georgia. The Board issued a tentative denial after a personal meeting with C.R.W. in June 1995. The Board issued its final decision after a formal hearing before a hearing officer. The hearing officer recommended that C.R.W. be certified. The Board rejected this recommendation based on its finding that C.R.W. was fiscally responsible. After a review of the record, we conclude that the evidence supports the Board's decision and affirm.

Admission to the State Bar of Georgia is governed by Rules promulgated by this Court.[1] Throughout the application process, the applicant bears the burden of establishing her fitness to practice law.[2] If the Board notifies an applicant of its intent to deny certification, the applicant may request a formal hearing.[3] The hearing

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[1]See Rules Governing Admission to the Practice of Law, adopted by the Supreme Court of Georgia, Ga.Ct. & Bar Rules, p.12-1, et seq.

[2]In re Beasley, 243 Ga. 134, 136 (1979).

[3]Id. at sec. 8(a).

officer's finding of fact and recommendations are not binding upon the Board or this court.[4] If there is any evidence to support the Board's decision, we will uphold it.

2. The Board's final determination denying certification refers to her "fiscal irresponsibility" and "the facts of this case." The dissent's view that C.R.W. did not have adequate notice of the Board's concerns is belied by the record. The Board's correspondence with C.R.W. since her initial application, as well as the transcript of is personal conference with her, demonstrate that C.R.W. had adequate notice and opportunity to meet the Board's concerns regarding her fiscal responsibility and candor.

3. This court has previously emphasized the importance of demonstrating stability in meeting financial obligations.[5] A review of this record shows that C.R.W. has not met her burden of showing a good faith effort to meet her obligations and has not established a sufficient payment history in view of her past financial difficulties.

C.R.W. graduated from George Washington School of Law in 1992. When she filed her application with the Fitness Board in February 1994 and disclosed significant defaulted student loans, the Board informed her of its policy to not grant certification until she demonstrated that she had contacted creditors, made arrangements to repay existing debts, and had met the repayment terms for six consecutive months. Despite knowledge of this policy and C.R.W.'s own statement in her original application that she was not attempting to defeat creditors, C.R.W. made no attempt to work out payment with her creditors. Indeed, C.R.W.'s lack of any good faith effort to repay debts was a factor cited by the bankruptcy court in denying discharge of two student

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[4]Id. at sec. 8(c).

[5]See In re Johnson, 259 Ga. 509 (1989).

loans. Only after the bankruptcy court entered this order did C.R.W. reach settlement agreements with other student loan creditors in March 1995. Her other student loan debts were discharged because of the creditors' failure to respond in the bankruptcy proceeding. Additionally, she was able to discharge approximately $17,000 in consumer debt.

The hearing officer found that as of April 1996 she was current on the obligations that survived bankruptcy or was not in default. The record, however, does not support this finding. Specifically, the letters from two student loan creditors stating that C.R.W. was not in default were dated March 1995, the same month she reached settlement agreements with them in bankruptcy and over a year prior to the evidentiary hearing. C.R.W. testified that these creditors allowed her to begin payments in April 1996. A credit report from one of these creditors, however, showed that payments were to begin in January 1996. Even if C.R.W. were not in default at the time of the hearing in April 1996, there was no evidence to show a satisfactory payment history on these two student loans totaling over $35,000. C.R.W. was obligated to begin paying a third student loan in October 1995. At the hearing in April, she produced for checks showing payments from October 1995 through January 1996. It was C.R.W.'s burden to establish her fiscal responsibility and she failed to do so.

Finally, the record shows other instances of a lack of candor or a lack of commitment to full disclosure. C.R.W. failed to disclose the existence of two loans and she failed to provide account numbers for four creditors and addresses for her three most recent employers.

Because the Board's and this court's primary concern in admitting persons to the practice of law is the protection of the public, any doubts must be resolved against the

applicant and in favor of protecting the public.[6] In light of this concern and all the circumstances detailed above, we cannot say the Board's decision lacks foundation in fact and we affirm.

Decision affirmed. All the Justices concur, except Benham, C.J., and Carley, J., who dissent.

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[6]In re Cason, 249 Ga. 806 (1982).

BENHAM, Chief Justice, dissenting.

I respectfully dissent from the majority's affirmance of the decision of the Board to Determine Fitness of Bar Applicants which denied a certificate of fitness to practice law to C.R.W.. C.R.W., a graduate of the George Washington University School of Law and a member in good standing of the Bar of the District of Columbia, filed an application with the Fitness Board for a certificate of fitness to practice law. After a hearing attended by C.R.W., the Board tentatively determined not to certify her as fit to practice law in Georgia and notified her of her right to a formal hearing "with respect to the reasons for the Board's tentative denial." See Supreme Court of Georgia Rules Governing Admission to the Practice of Law, Part A, Section 89a) ("Rules"). Incorporated within its tentative denial were give "specifications of the reasons for the Board's tentative order..." Id.[1] C.R.W. invoked her right to a formal hearing,

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[1]The specifications were as follows:

"1. Upon graduation from George Washington University Law School in 1992, you became responsible for some $100,000 in student loans.

"2. You were not candid about these loans on your application submitted January 5, 1994, or upon request for further information concerning the numerous loans when asked by the Office of Bar Admissions.

"3. Although four of your eight student loans were discharged eventually through bankruptcy court, four loans remain to be paid. These loans Are:...Because of your lack of candor, it unknown and unverified as to the exact payment which is due and low much has been paid over the last six months in these above-referenced loans.

"4. At the meeting with the Board...on June

and this Court appointed Timothy Sweeney, a member of the State Bar of Georgia, as the hearing officer. Mr. Sweeney conducted a hearing at which C.R.W. and counsel for the Fitness Board appeared. Pursuant to the requirement that he make written findings of fact and recommendations to the Board (Rules, Part A, Section 8(c)), Mr. Sweeney addressed each specification, found them to be either irrelevant or untrue, and recommended that they be overruled and set aside.[2] After receiving the hearing officer's findings of fact

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6, 1995, you were not candid with the Board when asked if you knew Ms. Ruth Hoch at George Washington University, with whom you made arrangements to repay your loan from George Washington University.

"5. During bankruptcy proceedings, instead of notifying Ms. Hoch at George Washington University about the adversary proceeding regarding discharge of the GWU loan, you sent the notice only to the legal department [of GWU]. This resulted in GWU's untimely attempt to avoid default of this Loan."

[2]Hearing Officer Sweeney addressed each specification as follows:

1. "This specification is simply a statement of background information and is not intended to serve by itself as a basis for disqualification. Obviously, an applicant's responsibility for loan debts incurred for otherwise legitimate purposes is a circumstance which, by itself, has absolutely no relevance to an applicant's integrity and character requisite to be a member of the Bar of Georgia."

2. "There is no evidence that the listing provided by Applicant in her original application and amendments was materially incorrect...There is no evidence that the Applicant had any more complete information than was provided...The Office of Bar Admissions was unable by its direct inquiries

to obtain any information greater than was provided by Applicant...The evidence does not reflect a lack of candor...There is not the slightest suggestion of any additional adverse information which Applicant was attempting to conceal. It strains credulity to suggest that having disclosed all of this adverse information, Applicant did not candidly disclose information available to her. The assertion in Specification No.2 is not true."

3. To the extent that No. 3 asserts that applicant succeeded in obtaining a discharge in bankruptcy of four of her eight student loans after she filed her application for a certificate of fitness, the hearing officer determined that the specification is "simply a statement of background information and is not intended to serve by itself as a basis for dis2qualification. An applicant's legitimate utilization of available remedies to contest, avoid, or discharge responsibility for loan debts incurred for otherwise legitimate purposes is a circumstance which, by itself, has absolutely no relevance to an applicant's integrity and character requisite to be a member of the Bar of Georgia." In his summary of the evidence, the hearing officer stated that the applicant had entered into repayment agreements with the creditors whose claims survived the applicant's bankruptcy proceeding, and that, as of the date of the hearing (April 1996), the creditors had confirmed that the applicant current in her payments pursuant to the payment plans. As for the assertion in Specification No.3 that the applicant displayed a lack of candor, the hearing officer determined that "[t]he information sought was known to the Office of Bar Admissions because Applicant disclosed that information. Instead, the difficulty in this case arises out of the Office's inability to verify the information provided by Applicant by direct contract with Applicant's student loan

creditors. The Office of Bar Admissions' inability to verify the recited information is not attributable to any action on the part of the Applicant, including any lack of candor, but to the apparent unwillingness of Applicant's student loan creditors to respond in the detail desired by the Office...There is no suggestion that Applicant did not authorize those creditors to disclose the information sought or that Applicant somehow interfered with those inquiries or the creditors' responses. Specification No.3 is not true."

4. The hearing officer found that applicant had responded negatively to the Board's question whether she "had been dealing with a lady named Ms. Hoch," and had later said that she had spoken with someone at GWU, but she was "not familiar with the name." The hearing officer pointed that the applicant had filed with the Office of Bar Admissions a copy of a letter signed by Ms. Hoch from GWU, and that interrogatories completed by Ms. Hoch were consistent with the applicant's summary description of her contacts with GWU regarding her student loan. The hearing officer concluded that Specification No.4 was not true after finding that applicant was truthful in her response to the Board that she had had contact with someone at GWU but could not remember who it was and could not identify the individual as Ms. Hoch.

5. The hearing officer interpreted Specification No.5 as charging that applicant gave notice of her bankruptcy case only to GWU's Legal Department instead of giving specific notice to Ms. Hoch. he pointed out that applicant gave notice of the bankruptcy discharge application in accordance with the bankruptcy judge's notice to her, and observed that service on Ms. Hoch would not have been effective under Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure. "To suggest that Applicant is at fault in her

and recommendations, the Board informed C.R.W. that it had rejected the hearing officer's recommendation that she be certified as fit to practice law. By means of a letter from the Director of the Office of Bar Admissions, the Board informed C.R.W. that "an applicant's lack of fiscal responsibility alone is sufficient cause to deny certification" and that she had not carried the "burden of proving that [she had] the requisite character and fitness to be certified for admission to the Bar of Georgia." Pursuant to Part A, Section 9 of the Rules, C.R.W. appealed the adverse decision of the Board to this Court, and today a divided Court affirms the Board's decision without giving C.R.W., the other members of the Bar of Georgia, aspirants to that membership, or the public any clear guide as to how there matters will be handled in the future.

1. The initial legal issue I perceive to be presented by C.R.W.'s appeal is whether the Board was procedurally authorized to base its denial of certification of the ground state, i.e., the applicant's lack of fiscal responsibility, when that reason did not appear in the specifications presented to C.R.W. as the reasons for the tentative denial of her

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integrity and character requisite to be a member of the Bar because she followed the available and mandated procedural requirements applicable to her contest with [GWU]... is simply too much...By definition, discharge applications are 'adversary' proceedings and for Applicant to treat [GWU] as an adversary is not reflective of any deficiency in her integrity and character requisite to be a member of the Bar. To the extent Specification No. 5 alleges that Applicant engaged in any action which reflects upon her integrity and character requisite to be a member of the Bar, the allegations are not true."

application. Section 8 of Part A of the Rules requires the Board "to prepare specifications of the reasons for the Board's tentative order [of denial of certification]" and send them by certified mail to the applicant. the applicant is required to file an answer to the specifications, with any specification not denied being deemed admitted. The Rules authorize the hearing officer to hear "all evidence deemed relevant to the specifications and the answers...in an effort to discover the truth..."

In the document entitled "Specifications" which C.R.W. received from the Board, the Board advised C.r.w. that the specifications listed therein were the reasons the Board had tentatively decided to deny her application, and that "they will form the basis of the Board's findings of fact and conclusions of law" unless she satisfactorily refuted them. It is clear to me that the Board reads the Rules as I do--the Board is required to state its rationale for denying certification and the applicant is given the opportunity to rebut the allegations set forth in the specifications. If, as the majority implicitly holds, the Board is not limited in taking adverse action to the reasons set forth in the specifications, why require that specifications be made? Why tell an applicant that unrefuted specifications will form the basis of the Board's denial when the Board is not so limited? Because of the Rules' repeated emphasis on the specifications and the Board's statement that those specifications and the Board's statement that those specifications not satisfactorily refuted will serve as the basis for its decision, I believe the Board, when it bases a denial of certification on a ground not raised in the specifications, and this Court when it affirms such a denial, acts in a procedurally defective manner.

2. I also take issue with the merits of the ground set forth by the Board as the reason for denial of certification--the applicant's purported lack of fiscal

responsibility. In essence, the Board determined that C.R.W.'s act of incurring debt for a legitimate purpose, her filing of a petition for bankruptcy and having four student loans discharged therein, her entry into agreements with her creditors concerning repayment schedules for the loans surviving the bankruptcy, and her being current on those repayment plans was tantamount to a "lack of fiscal responsibility" which reflected a lack of the character and integrity expected and required of a member of the State Bar of Georgia. I do not contest the fact that a lack of fiscal responsibility can be a factor in denying a certificate of fitness to practice law.[3] In In re Lumpkin, 251 Ga. 64 (303 SE2d 679)(1983), and in In re Johnson, 259 Ga. 509 (5)(384 SE2d 668)(1989), an applicant's fiscal irresponsibility was cited as one of several reasons why the denial of certification was being upheld. applicant Johnson had disclosed the existence of only one student loan (he actually had two); he had denied defaulting on a student loan when he had, in fact, defaulted on both loans; he had not disclosed a judgment taken by the New York Department of Law following his default on one of the student loans; he had not abided by the repayment schedule he had worked out concerning the loan

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[3]I note also that many a Georgia lawyer has been disbarred or suspended from the practice of law for acting in a fiscally irresponsible manner. See, e.g., In the Matter of Pittman, 264 Ga. 284 (442 SE2d 761)(1994); In the Matter of McDonald, 264 Ga. 137 (443 SE2d 850)(1994); In the Matter of Genins, 264 Ga. 90(442 SE2d 733)(1994); In the Matter of Findley, 263 Ga. 832 (441 SE2d 410)(1994); In the Matter of Royal, 262 Ga. 717 (425 SE2d 650)(1993). However, I am unaware of any attorney heretofore being disciplined for incurring debt, filing bankruptcy, and entering into repayment plans with creditors.

on which judgment had been taken; he had not satisfied the judgments taken against him by creditors; and he had not made any payments on the student loan that had not been reduced to a judgment. In addition to multiple citations to Johnson's lack of candor, this Court determined that Johnson's "failure to satisfy financial obligations freely entered into reflects a lack of fiscal responsibility ... and a lack of character and integrity." Id., at 510. The Court found fault with Johnson for failing to abide by the repayment schedule he had worked out and **not** for the act of negotiating a repayment plan; therefore, I must conclude that Johnson's fiscal irresponsibility was his failure to satisfy the judgments taken against him and his failure to make **any** payments on one student loan. In Lumpkin, supra, 251 Ga. at 64-65, the applicant had falsely sworn that there were no unpaid debts in connection with a residence he had built for another; the applicant had defaulted on an education loan and failed to repay the entity who did pay it, despite his agreement to pay; the applicant had made no payments on an outstanding indebtedness; and his application was false and misleading due to his failure to disclose requested facts. The hearing officer in that case opined that the failure to honor legal and financial obligations demonstrated a lack of character and fitness, "particularly in view of the applicant's making no real effort to repay his financial obligations." Id., at 65.

In stark contrast is C.R.W.'s situation – she incurred debt for a legitimate reason and when she found herself financially unable to pay her creditors, she sought relief by initiating bankruptcy proceedings and by agreeing with creditors on new repayment schedules for her remaining financial obligations. As the hearing officer succinctly stated:

> There is no suggestion in the Rules of the State Bar of Georgia, the rules of any court, or any other

> relevant source that it is an expectation of members of the Bar, either as an expectation subject to disciplinary sanction or even a simple statement of the expectation as an aspirational goal, that a lawyer will not aggregate debt beyond the lawyer's ability to pay or that the lawyer has any obligation to pay the lawyer's debts, other than debts arising out of [the] handling of client funds; or that the lawyer may not take advantage of bankruptcy remedies to discharge those debts...

I predict that aspirants to membership in the State Bar of Georgia, some incurring student loan indebtedness greater than any of us a generation or more older can fathom, will be very concerned about the majority's decision that incurring that debt and being unable to live up to the payment plan originally agreed upon can now serve as the basis for denial of a certificate of fitness to enter into the practice of law in Georgia.

Because I disagree with the majority's and the Board's decisions that incurring debt for a legitimate purpose, using legitimate means to relieve oneself of the burden of that debt, and keeping current on repayment plans worked out with creditors whose claims survived the bankruptcy proceeding, constitutes fiscal irresponsibility that reflects a lack of the character and integrity required of a member of the Bar of Georgia, I must dissent to the majority's decision. I am authorized to state that Justice Carley joins this dissent.

APPENDIX B

SUPREME COURT OF GEORGIA
OFFICE OF BAR ADMISSIONS
POST OFFICE BOX 38466
ATLANTA, GEORGIA 30334

BOARD TO DETERMINE FITNESS OF BAR APPLICANTS

September 18, 1997

HULETT H. ASKEW
DIRECTOR OF ADMISSIONS

BOARD OF BAR EXAMINERS

Ms. Cynthia Rena Webb
P.O. Box 1041
Scottsboro, AL 35768

Dear Ms. Webb:

The Board to Determine Fitness of Bar Applicants has considered the findings of fact and recommendations of the Hearing officer, Timothy J. Sweeney, Esq., with respect to your Application for Certification of Fitness to Practice Law. A copy of this document is enclosed. The Board has directed me to inform you that it has rejected the recommendation of Mr. Sweeney that you be certified as fit to practice law. The Board entered a formal order denying your application on September 12, 1996.

contrary to the hearing Officer's recommendation, an applicant's lack of fiscal responsibility alone is sufficient cause to deny certification. The Supreme Court has held that an applicant's "failure to satisfy financial obligations freely entered into reflects a lack of fiscal responsibility on his part

and a lack of character and integrity expected and required of one who seeks to become a member of the Bar of Georgia." In Re: Johnson, 259 Ga. 509, 511 (1989). The burden of proof in these matters rests clearly upon the applicant. In Re: Beasley, 243 Ga. 134, 136 (1979). In light of the facts of this case, the Board feels that you have not carried that burden of proving that you have the requisite character and fitness to be certified for admission to the Bar of Georgia.

The Board's decision with respect to your application is final. However, you are advised that under the provisions of Part A, Section 9, Rules Governing Admission to the Practice of Law in Georgia, you may appeal the Board's decision to the Supreme Court of Georgia. If you decide to do so, you must file a written notice of appeal with the Office of Bar Admissions and with the Clerk of the Supreme court within thirty (30) days of receipt of this letter. The Clerk will docket the appeal and notify you of the docketing. Thereafter, you will have twenty (20) days in which to file an original and seven copies of your written argument in support of your appeal. You must also file a copy of your argument with the Office of Bar Admissions and a copy with Rebecca Mick, Office of the Attorney General, 132 State Judicial Building, Atlanta, Georgia 30334.

Sincerely,
"/s/Hulett H. Askew
Hulett H. Askew
Director of Admissions

Certified Mail: #P 576 885 584

SUITE 610 47 TRINITY ATLANTA, GA 30334
HEALTH BUILDING AVENUE, S.W. (404)656-3490

APPENDIX C

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE:

APPLICATION FOR
CERTIFICATION OF FITNESS TO PRACTICE LAW OF
CYNTHIA RENA WEBB

Bar Admissions Docket No. 157

FINDINGS OF FACT AND RECOMMENDATIONS

After consideration of the evidence presented in the April 22, 1996 hearing on this matter and the written and oral argument of the Applicant and oral argument on behalf of the Board, I make the following findings of fact and recommendations.

FINDINGS OF FACT

1.
BACKGROUND

The Applicant was graduated from George Washington University law school in May, 1992. To complete her undergraduate and law school education, Applicant had incurred and had outstanding debt which, with interest, approximated some $90,000.00.

Applicant earned $2,500 in 1992.

Applicant was admitted to the District of Columbia bar and the bar of the United State Tax Court in July, 1993.

In that year, Applicant earned $6,875.00. During that year, Applicant became a single parent.

There is no suggestion that Applicant did not diligently pursue employment in 1992 or 1993 following her graduation or that Applicant had resources other than income from employment which could have been used to pay her loan obligations.

Applicant filed the application at issue in January, 1994.

In that application, Applicant listed her obligations for loans made to finance her law school education totaling some $90,000.00.

In addition, Applicant stated that she was in default on loans totaling, with interest, some $18,000.00. Applicant later learned, and promptly informed the Office of Bar Examiners, that while default was imminent, Applicant was not technically in default but soon would be on those loans.

With her application, Applicant filed a copy of a bankruptcy petition she had filed but dismissed in 1992. That bankruptcy petition listed the same loans listed in the application filed with the Office of Bar Examiners and listed the creditors on those loans in the same manner in which the creditors were listed on the application. The loan amounts varied between the bankruptcy petition and the application but only because of the interest accruals from December, 1992 to January, 1994.

When Applicant initially tendered the application to the Office, she also tendered the application fee and the $300 late fee. The Office's staff informed the Applicant that because of the lateness of her filing and the Board's unpublished, unwritten policy that applicants demonstrate that payment plans were in place for outstanding student loans, it was not likely that the Board would act upon the application in time to justify the payment of the late fee. The Office's staff suggested that the applicant not file the

application for the upcoming bar examination but instead that she use the $300 saved by not paying the late fee to pay down the some $90,000.00 loan debt she had incurred for her law school education. applicant did so and provided to the Office evidence of the application of the $300 against the $90,000.00 debt.

The $300 in payments did not remotely satisfy the $90,000.00 debt.

On March 23, 1994, Applicant filed a written amendment to her application in response to the Office's March 14, 1994 request for additional information. In that amendment, Applicant disclosed an additional undergraduate loan debt of $2800.00, including interest, which had not been listed on the application.

In May , 1994, Applicant filed a bankruptcy petition which against listed the law school education debt which had been listed on her application to the Board, again listing the creditors in the same manner the creditors had been listed in the application and listing the debt amounts owed in approximately the same amounts which had been listed in the application. Applicant concurrently filed a copy of that bankruptcy petition with the Office.

In that bankruptcy proceeding, Applicant sought to discharge through adversary proceedings the student loan debt she had incurred for undergraduate and law school education. Applicant voluntarily dismissed some of those adversary proceedings, achieved default judgments in her favor in some, and lost one contested proceeding. Records reflecting those actions were filed by the Applicant with the Office.

Four creditors whose claims against Applicant survived the bankruptcy proceedings have reached agreements with Applicant for the repayment of the loans or the obligation to commence payment had not yet matured. All of those creditors confirmed that the loans were being

paid currently in accordance with a payment plan or that there was no default.

There is no suggestion that Applicant has not diligently pursued employment since the filing of her application which is at issue or that Applicant had resources other than income form employment which could have been used to pay her loan obligations.

2.

SPECIFICATION NO. 1

Specification No. 1 asserts that upon graduation form George Washington University Law School in 1992, Applicant became responsible for some $100,000 in student loans.

This specification is simply a statement of background information and is not intended to serve by itself as a basis for disq2ualification. Obviously, an applicant's responsibility for loan debts incurred for otherwise legitimate purposes is a circumstances which, by itself, has absolutely no relevance to an applicant's integrity and character requisite to be a member of the Bar of Georgia.

3.

SPECIFICATION NO. 2

Paragraph 2 of the Specifications charges:
"You were not candid about these [some $100,000 student loans incurred through Applicant's undergraduate and law school education] on your application submitted January 5, 1994, or upon request for further information concerning the numerous loans when asked by the Office of Bar Admissions."

In completing the application, Applicant relied upon a summary of loans outstanding upon her graduation from law school provided to her by the law school's financial aide office.

The listing in the application squares in all material respects with the listing of those loans in Applicant's December, 1992 bankruptcy petition, which was provided by the Applicant as part of her application. The listing in the application squares in all material respects with the listing of those loans in Applicant's May, 1994 bankruptcy petition which was filed as an amendment to her application.

There is no evidence that the listing provided by Applicant in her original application and amendments was materially incorrect.

There is no evidence that the Applicant had any more complete information than was provided. On the contrary, Applicant testified without contradiction that she ought from the sources listed but was unable to obtain more detail. The Office of Bar Admissions was unable by its direct inquiries to obtain any information greater than was provided by Applicant.

The application discloses the approximate amount of Applicant's student loan debt.

The application discloses that the Applicant is in default on some $18,000.00 of that debt. this disclosure was apparently not technically correct in that applicant had not actually been declared to be in default but simply that she soon would be. Applicant informed the Office of Bar Admissions of the correct information immediately following the filing of her application.

The application discloses and the Applicant separately disclosed that Applicant was not in a position to cure the default or otherwise able currently to pay the debts and would not likely be able to do so in the near future.

The evidence does not reflect a lack of candor. On the contrary, the Applicant disclosed on her application and her separate disclosures to the Office of Bar Applications her outstanding loan debt in all material respects, that she had not paid the debt, that $18,000 of the loans had been declared in default, and that she was not able to and was not likely to be able to pay the loans or cure the default. There is not the slightest suggestion of any additional adverse information which Applicant was attempting to conceal. It strains credulity to suggest that having disclosed all of this adverse information, Applicant did not candidly disclose information available to her.

The assertion in Specification No. 2 is not true.

4.

SPECIFICATION NO. 3

Specification No. 3 asserts that subsequent to filing of her application, Applicant succeeded in obtaining a discharge in bankruptcy of four of her eight student loans.

This specification is obviously simply a statement of background information and is not intended to serve by itself as a basis for disqualification. An applicant's legitimate utilization of available remedies to contest, avoid, or discharge responsibility for loan debts incurred for otherwise legitimate purposes is a circumstances which, by itself, has absolutely no relevance to an applicant's integrity and character requisite to be a member of the Bar of Georgia.

Specification No. 3 also asserts that because of Applicant's lack of candor, the office of Bar Admissions was unable to verify the exact amount which was due under the undischarged student loan debts and how much had been paid in the last six months.

The information sought was known to the Office of Bar Admissions because Applicant disclosed that

information. Instead, the difficulty in this case arises out of the Office's inability to verify the information provided by Applicant by direct contact with Applicant's student loan creditors.

The Office of Bar Admissions' inability to verify the recited information is not attributable to any action on the part of the Applicant, including any lack of candor, but to the apparent unwillingness of Applicant's student loan creditors to respond in the detail desired by the Office to inquiries by that Office to confirm the information provided by the Applicant. There is no suggestion that Applicant did not authorize those creditors to disclose the information sought or that the Applicant somehow interfered with those inquiries or the creditors' responses.

Specification No. 3 is not true.

5.

SPECIFICATION NO. 4

Specification No. 4 asserts that Applicant was not candid in a June 6, 1995 meeting with the Board to Determine Fitness of Bar Applicants when Applicant was asked if Applicant knew Ms. Ruth Hoch at George Washington University with whom Applicant made arrangements to repay her loan from George Washington University.

In Applicant's meeting with the Board, Applicant was asked whether she "had been dealing with a lady named Ms. Hoch." Her response was "No, I hadn't bee dealing with anyone." Upon further inquiry, however, the Applicant stated that she had called someone with George Washington University in 1994 but she was not sure who and that she had also called someone in 1995 concerning payment demands she received after the Applicant had filed a bankruptcy

petition but she further stated that she was "not familiar with the name."

In fact, in February, 1994, Applicant had filed with the Office of Bar Admissions a copy of a February 1, 1994 letter concerning Applicant's deferment requests on Applicant's loans with George Washington University. The letter was signed on behalf of that institution by Ms. Hoch.

Applicant's summary description of her contacts with George Washington University in this connection are consistent with the testimony by answer to interrogatories by Ms. Hoch. Ms. Hoch indicated that she had sent a payment notice to the Applicant in October, 1994, which bore Ms. Hoch's name and a second in November, 1994 which did not. In addition, Ms. Hoch's description of the March, 1995 conversation with the Applicant is also consistent with Applicant's except that Ms. Hoch indicated that in the conversation, Applicant stated that the Applicant had filed for bankruptcy relief, the Applicant had provided to Ms. Hoch the bankruptcy case number and court in which the case was pending, and that the Applicant informed Ms. Hoch that Applicant was seeking a discharge in that case of the debt to George Washington University.

The fact question to be resolved is whether Applicant was truthful in her response to the Board that she had had contact with someone with George Washington University but she did not know who that individual was and could not identify her as Ms. Hoch. Neither the circumstances nor any potential motive support the charge that she was not truthful.

There was no apparent motive for the Applicant to be untruthful. The Board already had Ms. Hoch's name by virtue of the Applicant's providing that information to the Office of Bar Admissions almost 18 months prior to the Board's meeting. It strains credulity to suggest that Applicant was attempting to conceal information she had previously provided.

There are no circumstances to suggest that Applicant was being untruthful. Applicant had previously provided the information the Board sought in the meeting. Applicant's contacts with Ms. Hoch had been infrequent and certainly not sufficient to suggest that in June, 1995 she should have certainly remembered the name.

Specification No. 4 is not true.

6.

SPECIFICATION NO. 5

Specification No. 5 charges that in the course of her 1994 bankruptcy case, instead of giving specific notice to Ms. Hoch of Applicant's application for discharge of the George Washington University loans, Applicant gave notice only to the institution's Legal Department.

Applicant's loan debts to George Washington University were discharged by reason of the institution's default in responding to the discharge application.

Applicant gave notice of the bankruptcy discharge application in accordance the bankruptcy judge's notice to her that nay application for discharge was required to be served on the managing or general agent of the institution as provided in the Federal Rules of Bankruptcy Procedure. As set forth in the certificate of service she filed in connection with her application concerning George Washington University, service of the application was made in precisely that manner. In fact, the application was delivered to George Washington University and was then delivered internally by that institution to the Legal Department.

Applicant did not address service of her application for discharge of the debt she owed to George Washington University to Ms. Hoch and, except for the conversation between the Applicant and Ms. Hoch in March, 1995

described above, Applicant did not otherwise give notice specifically to Ms. Hoch of that application.

Bankruptcy Rule 7004(b)(3) of the Federal Rules of Bankruptcy Procedure requires service upon a corporation in an adversary proceeding in a bankruptcy case, including an application for discharge of a debt, be made upon an officer, a managing or general agent, or any other person authorized by the entity to receive service. Service on Ms. Hoch would not have been effective under that rule. Ms. Hoch, who had one time held the title "Employment Counselor" and at lest in April, 1996, "Senior Assistant Director," did not fall within the category of persons upon whom service could be made. Since Ms. Hoch did not fall within that category, any service upon her would have been improper and ineffective.

There is no question that the service made upon George Washington University, properly addressed in accordance with Bankruptcy Rule 7004, was internally directed by that institution to its Legal Department.

To suggest that the Applicant is at fault in her integrity and character requisite to be a member of the Bar because she followed the available and mandated procedural requirements applicable to her contest with George Washington University, or because the Legal Department of that institution did not timely address what is on its face an application to discharge a debt owing by the Applicant to the University, is simply too much. Applicant followed the rules governing proceedings of the court in which her bankruptcy case was pending and the information provided to her by the bankruptcy judge as to compliance with those rules to the same effect. By definition, discharge applications are "adversary" proceedings and for Applicant to treat George Washington University as an adversary is not reflective of any deficiency in her integrity and character requisite to be a member of the Bar.

To the extent Specification No. 5 alleges that Applicant engaged in any action which reflects upon her integrity and character requisite to be a member of the Bar, the allegations are not true.

RECOMMENDATIONS

The Applicant disclosed to the Office of Bar Admissions in all material respects the information available to her which was sought of her either in her original application or thereafter. There was no lack of candor. On the contrary, Applicant's disclosures included information which was adverse to Applicant or, better put, which Applicant believed to be adverse to her application or the Office of Bar Admissions communicated to her it believed to be adverse to Applicant, such as for example, the facts that she was in debt for some $100,000, that she had not been able to pay those loans, that she was not likely to be able to pay any time soon, and that she was in default on some $18,000 of those loans.

There is no suggestion in the Rules of the State Bar of Georgia, the rules of any court, or any other relevant source that it is an expectation of members of the Bar, either as an expectation subject to disciplinary sanction or even a simple statement of the expectation as an aspirational goal, that a lawyer will not aggregate debt beyond the lawyer's ability to pay; or that the lawyer has any obligation to pay the lawyer's debts, other than debts arising out of handling of client funds; or that the lawyer may not take advantage of bankruptcy remedies to discharge those debts; or that in taking advantage of bankruptcy, the lawyer will act other than as an adversary of the creditor to whom the lawyer owes the debt sought to be addressed in bankruptcy proceedings.

There is not the slightest suggestion, nor can there rationally be, that Applicant's integrity and character are

brought into question because she incurred $100,000 in debt to complete her education.

There is not the slightest suggestion that Applicant had funds available or should have by reasonable diligence have had funds available to repay the loans or that she diverted funds to any purpose other than the basic needs or herself and her child. On the contrary, at the suggestion of the Office of Bar Admissions when Applicant filed her application, Applicant promptly applied toward her $90,000 debt the $300 available to her by not paying the late filing fees. It should have been apparent that effort would be simply a futile gesture, but Applicant made the gesture because the Office of Bar Admissions suggested she make the futile gesture. But even if Applicant had spent available funds for purposes beyond her and her child's basic needs other than repayment of Applicant's educational debt, nothing in the Rules of the State Bar, or in any rule of court, or in any other relevant source suggests that a lawyer who is a member of the Bar is required or expected to adhere to such a standard of integrity and character.

There is not the slightest suggestion in this record that Applicant has misused funds of others or that she has taken any other untoward action to address her debts or for any other purpose. Neither loans nor the debt arising from loans nor a failure to repay a loan represents a misuse of funds of others. That is certainly true on the facts of this case. There is no State Bar rule, rule of any court, or any relevant source which suggests otherwise.

It may be assumed that perfect integrity and character, unrelated to that required for membership in the Bar, would counsel against the Applicant incurring debt which would become unbearable if the promised rewards of incurring the debt were for some reason not forthcoming, or for using available funds to favor creditors at the expense of satisfying Applicant's and her child's basic needs, or against

using bankruptcy to obtain relief from the unsustainable burden of that debt. but that is not the applicable standard because the Bar neither commands nor demonstrates such perfect integrity and character.

I find the Specifications re not true and recommend that the Specifications as a basis for the tentative order of the Board denying Applicant's application for certification be overruled and set aside.

DATED: June 6, 1996.

"s/Timothy J. Sweeney"
TIMOTHY J. SWEENEY
Hearing Officer

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